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POLLUTION CONTROL
HEARINGS BOARD

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DAWSON PILE DRIVING, INC.,)	
)	
Appellant,)	PCHB No. 89-30
)	
v.)	ORDER GRANTING PARTIAL
)	SUMMARY JUDGMENT
STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY,)	
)	
Respondent.)	

This matter came before the Board on Respondent Department of Ecology's ("Ecology's") Motion for Partial Summary Judgment. The motion was filed on September 21, 1989, along with a Motion for Separate Hearing and a Memorandum in Support of Motion for Partial Summary Judgment (which included affidavits of Ron Devitt and Karen Daubert and excerpts from Answers to Ecology's First Interrogatories to the Appellant). The appellant filed a Memorandum in Opposition to Respondent's Motion for Partial Summary Judgment on October 10, 1989. Its memorandum was unsupported by affidavits, deposition excerpts, interrogatory answers or admissions. The Board heard oral argument on Ecology's motion on October 11, 1989 by telephonic conference call.

I. FACTS

On the record before the Board, the following facts are undisputed:

1. Sometime between about 4:30 p.m. Friday, December 9, 1988 and 11 a.m. on Sunday, December 11, 1988, the appellant's 35-foot boat sank off Luther Burbank Park in Lake Washington.

2. As and after the vessel sank, it discharged oil into the lake. The discharge extended from the northeast tip of Mercer Island to Medina.

3. On Monday, December 12, 1988, Ron Devitt (an Ecology inspector) learned about the oil discharge from a radio report.

4. Mr. Devitt and Bob Newman (another Ecology inspector) met at Luther Burbank Park. They observed the appellant's pile driver anchored off the north pier of the park, but the sunken vessel was not visible.

5. Oil was surfacing in front of the pile driver and spreading across the lake.

6. Also on December 12, 1988, one Frank Helm dove at the request of Richard Dawson, president of Dawson Pile Driving, Inc., to inspect the sunken vessel. He observed that all the glass in the wheelhouse had been broken. In his opinion, someone had broken the wheelhouse window with a hammer or similar object. He observed that one of the deck plates that locked down and covered the deck was ajar and the engine cover

1 was lying loose. He observed that the hatchway that covered the
2 engine was open by about two feet and that laying in the corner
3 of the vessel was the drain plug that seals the engine
4 compartment. In his opinion, to get to that drain plug one
5 would have to go inside the engine compartment, pull the plug
6 out, and lay it on the deck. In Mr. Helm's opinion, the sinking
7 of the vessel was caused by the removal of the drain plug. He
8 opined further that the drain plugs are generally secure and
9 usually have to be fully removed by force.

10 7. On December 13, 1988 Frank Helm, acting as an agent of
11 the appellant, spoke with an officer of the Mercer Island Police
12 about the sinking.

13 8. The Mercer Island police determined that the sinking
14 was caused by an act of malicious mischief.

15 II. DECISION

16 1. A summary judgment must be rendered "if the pleadings,
17 depositions, answers to interrogatories, and admissions on file,
18 together with the affidavits show there is no genuine issue as
19 to any material fact and the moving party is entitled to
20 judgment as a matter of law." CR 56; WAC 371-08-031. The
21 moving party has the burden of proving there is no genuine issue
22 of material fact. Preston v. Duncan, 55 Wn.2d 678, 349 P.2d 605
23 (1960).
24
25
26

1 2. Ecology's Motion for Partial Summary Judgment was
2 supported by the Affidavit of Ron Devitt, the Affidavit of Karen
3 Daubert, and the appellant's answers to excerpts from Ecology's
4 First Interrogatories. The appellant's response to Ecology's
5 motion was unaccompanied by affidavits, deposition excerpts,
6 answers to interrogatories or admissions.

7 3. Thus, Ecology has met its burden of proving that there
8 is no issue of material fact.

9 4. Ecology's Motion for Partial Summary Judgment asks this
10 Board to rule that the sabotage exception to strict liability
11 found in RCW 90.48.320(3)(a) does not apply in this case.

12 5. The Board grants Ecology's Motion for Partial Summary
13 Judgment for the following reasons:

14 5.1 RCW 90.48.320 states:

15 It shall be unlawful, except under the circumstances
16 hereafter described in this section, for oil to enter
17 the waters of the state from any ship or any fixed or
18 mobile facility or installation located offshore or
19 onshore whether publicly or privately operated,
20 regardless of the cause of the entry or fault of the
21 person having control over the oil, or regardless of
22 whether it be the result of intentional or negligent
23 conduct, accident or other cause. This section shall
24 not apply to discharges of oil in the following
25 circumstances:

- 26 (1) The person discharging was expressly authorized
 to do so by the department prior to the entry
 of the oil into state waters;
 (2) The person discharging was authorized to do so
 by operation of law as provided in RCW
 90.48.200;

1 (3) Where a person having control over the oil can
2 prove that a discharge was caused by:
3 (a) An act of war or sabotage, or
 (b) Negligence on the part of the United States
 government, or the state of Washington.

4 (Emphasis added).

5 By its terms, this statute requires the appellant to prove
6 that an act of sabotage has occurred in this case.

7 5.2 In ruling on Ecology's motion, this Board must first
8 determine the meaning of the term "sabotage" in RCW 90.48.320.
9 RCW 90.48.907 states in pertinent part:

10 RCW 90.48.315 through 90.48.365 . . . being necessary
11 for the general welfare, the public health, and the
12 public safety of the state and its inhabitants, shall
 be liberally construed to effect their purposes. . . .

13 Thus, this Board is required to interpret RCW 90.48.320
14 liberally to effect its purpose. One purpose of RCW 90.48.320
15 is to impose strict liability on parties responsible for
16 discharges of oil into the waters of this state. This, in turn,
17 requires that exceptions to strict liability, including the
18 sabotage exception, be narrowly construed.

19 5.3 RCW 90.48.320 does not define the term sabotage.
20 Washington law does, however, contain a crime called sabotage.
21 RCW 9.05.060 states:

22 Whoever, with intent that his act shall, or with
23 reason to believe that it may, injure, interfere with,
24 or obstruct any agriculture, stockraising, lumbering,
25 mining, quarrying, fishing, manufacturing, trans-
26 portation, mercantile or building enterprise wherein
 persons are employed for wage, shall wilfully injure
 or destroy, or attempt or threaten to injure or

1 destroy, any property whatsoever, or shall wilfully
2 derange, or attempt or threaten to derange, any
mechanism or appliance, shall be guilty of a felony.

3 5.4 RCW 9.05.060 was enacted as part of a statute entitled,
4 "An Act to protect certain industrial enterprises wherein
5 persons are employed for wage, and to prevent interference with
6 the management or control thereof, and to prohibit the
7 dissemination of doctrines inimical to industry, and prescribing
8 penalties." Laws of 1919, ch. 173. The Washington Supreme
9 Court has discussed RCW 9.05.060 in the course of determining
10 whether it defined sabotage. The Court stated that RCW 9.05.060
11 does not itself define sabotage. The Court cited with approval
12 the following definition:

13 Sabotage, a method used by labor revolutionists to
14 force employers to accede to demands made on them. It
15 consists in a willful obstruction and interference
16 with the normal processes of industry. It aims at
inconveniencing and tying up all production, but stops
short of actual destruction of or endangering human
life directly.

17 State v. McLennen, 116 Wash. 612, 615, 200 P. 319 (1921).

18 5.5 The requirement that we broadly construe RCW 90.48.320
19 requires us to narrowly construe its exceptions. We therefore
20 decline to adopt the appellant's suggestion that sabotage has
21 occurred whenever property damage has occurred. Rather, we
22 adopt the definition of sabotage cited in State v. McLennen, 116
23 Wash. 612, 615, 200 P. 319 (1921).


1 5.6 The undisputed facts contain no evidence that the
2 appellant's vessel was sunk by the actions of labor revolu-
3 tionists to force employers to accede to demands made on them.
4 Nor is there evidence of wilful obstruction and interference
5 with the normal processes of industry.

6 5.7 We therefore hold that sabotage has not occurred in
7 this case.

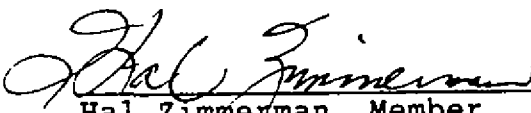
8 The Respondent Department of Ecology's Motion for Partial
9 Summary Judgment is therefore granted.

10 DONE this 7th day of ~~November~~ ^{December}, 1989.

11 POLLUTION CONTROL HEARINGS BOARD

12 
13 Judith Bendor, Chair

14 
15 Wick Dufford, Member


16 
17 Hal Zimmerman, Member
18
19

20 Presented by:

21 KENNETH O. EIKENBERRY
22 Attorney General

23 
24 Ann C. Essko
25 Assistant Attorney General
26

NOTICE OF PRESENTATION WAIVED
AND APPROVED FOR ENTRY


Paul D. Ryals
Attorney for Appellant